(Temp. Emer. Ct. App. 1988) (emphasis added). The intention to waive appellate rights must be "clear and unequivocal". Furthermore, there is authority for the proposition that the right of appeal of a Rule 53 Special Master's legal conclusions cannot be waived. See, *Polin v. Dun and Bradstreet*, 634 F.2d 1319. 1321, Note 4, (10th Cir. 1980); *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 931 (10th Cir. 2001). Common sense dictates that the final and binding language in this instance meant that the claims administration process had been exhausted and the issue was ripe for appeal to the District Court.

As its only legal authority for affirming the decision of the District Court in this case, the Sixth Circuit cited a single First Circuit case involving a settlement agreement between two business entities. *Brown v. Gillette*, 723 F.2d 192 (1st Cir. 1983). In *Brown*, the parties agreed that an arbitrator would govern the administration of the agreement with the proviso that the District Court would decide certain claims: "The parties agree that the determinations of the [district] Court on such claims shall be final and binding and hereby waive any and all rights of appeal with respect to such determinations. *Brown*, 723 F.2d at 192-193. The First Circuit correctly found that this language constituted a waiver of judicial review by the Court of Appeals. This case, however, involved a business contract *at law* where the parties agreed to let an *Article III* judge decide certain claims and *expressly and explicitly agreed to waive circuit level review of the judge's decisions*. The obvious implication in *Brown* is that the *arbitrator's* decisions *were* reviewable.

In the instant *equitable* proceeding, the CASA contains no mention of arbitration or arbitrators, the District Court was not involved at the administrative level, and there is no reference whatsoever to any waiver of the right to judicial review. *Brown* in no way supports the use of a bogus

implied waiver of judicial review to exclude otherwise eligible class members in the context of an equitable class action.

CASA § 9.1 specifically empowers the District Court to interpret and enforce the terms of the CASA. The only *altering* of the terms of the CASA occurred when the District Court approved and adopted CAP 30(8) which belatedly added waiver language in March of 2003, almost two years after the CASA was approved. No class member ever assented to this post-agreement waiver of appellate rights.

Upon motion or objection, the District Court has an obligation to review the *legal* conclusions of a Special Master *de novo*. *U.S. Energy Corp. v. Nukem, Inc.*, 400 F.3d 822, 830 (10th Cir. 2005). The failure to do so constitutes a gross abdication of the equitable and moral responsibility of the judiciary to protect deserving but late arriving class members who are akin to "wards of the court". See, *Zients*, 459 F.2d at 630. In essence, the District Court excluded a permanently injured class member and scores of others similarly situated, from a class action created for *their* benefit without judicial review. Mrs. Kane's exclusion should have been reviewed under the "excusable neglect" standard set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1992) and/or the substantial compliance standard set forth in *In re: Eagle-Picher Industries, Inc.*, 285 F.3d 522 (6th Cir. 2002)[6]. Under either standard, Mrs. Kane would have been reinstated and compensated as Sulzer and the claims administrator had always anticipated.

Mrs. Kane would ask this Court to consider the following passage which concludes *Turner*:

---

[6] Under CASA § 15.11, Delaware law governs the settlement agreement. Substantial compliance is recognized and applied in Delaware under similar circumstances. See, *Mendich v. Hunt International Resources, Inc.*, 1981 WL 7629 (Del. Ch. 1981).

> Finally, the district court failed to give sufficient weight to the policy implicit in Fed.R.Civ.P. 23, which governs class actions, that places a special responsibility on the district court to protect potential class members and ensure that they receive the due process to which they are entitled. See, e.g., *In Re Nissan Motor Corp. Antitrust Litigation*, 552 F.2d 1088, 1098 (5th Cir. 1997) (appellate review necessary to assure rights of absentee class members are not "inundated in the wake of district court's brisk supervision"). Although Rule 23 does not mean that the parties were prohibited from providing in a consent judgment for the arbitrator type arrangement that PMC urges was intended in this case, it does mean that ***in cases of doubt about the clear meaning of such an agreement, and particularly the agreement uses the term "special master", the courts should construe the judgment to provide for the kind of appeal allowed by Rule 53.***

Turner, 722 F.2d at 665-666 (emphasis added).

CONCLUSION

Petitioners Kane respectfully request that the Court grant their Petition for a Writ of Certiorari to address an issue of exceptional importance in the future administration of class actions nationwide: the reviewability of *legal conclusions* made by a "Special Master" which result in the wrongful exclusion of otherwise eligible class members. This

Court has an opportunity to make sure that the drafters of future class action settlement agreements will not use the legal term "Special Master" to describe trust administrators with *unreviewable* legal decision-making powers, because it is inherently contradictory and confusing under Rule 53, and results in the forfeiture of Rule 53 judicial review without notice prior to opting in to the action. Mrs. Kane and her husband, Joseph, respectfully request that this Court reverse the decision of the Sixth Circuit and remand this case to the United States District Court for the Northern District of Ohio, Eastern Division, for review of the subject Special Master's Determination (App. 3a), and the scores of similar Determinations excluding other deserving class members, in the context of *Pioneer*, *Eagle-Picher*, Delaware law, and the overall equitable nature of the underlying proceeding.

Respectfully submitted,

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Counsel of Record
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(509) 325-8770
Counsel for Petitioners Kane

Dated: August 31, 2005

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 03-4325; 03-4518; 03-4519; 04-3293; 04-3360; 04-3361

FILED
FEB 22 2005
LEONARD GREEN, Clerk

In re: SULZER ORTHOPEDICS AND KNEE
PROSTHESIS PRODUCTS LIABILITY LITIGATION,

CERTIFIED CLASS,
Plaintiffs,
LINDA MEDIATE (03-4325/4518; 04-3360);
CECEE C. KANE and JOSEPH P. KANE
(034519; 04-3293(3361),
Plaintiffs - Appellants,
v.

SULZER MEDICAL et al.,
Defendants - Appellees,
SULZER SETTLEMENT TRUST,
Appellee,

Before: MARTIN, COLE, and GIBBONS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s Leonard Green
Leonard Green, Clerk

Recommended for full-text publication
Pursuant to Sixth Circuit Rule 206

File Name: 05a0084p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 03-4325/4518/4519; 04-3293/3360/3361

In re: SULZER ORTHOPEDICS KNEE PROSTHESIS PRODUCTS LIABILITY LITIGATION.	)
CERTIFIED CLASS, Plaintiffs,	)
LINDA MEDIATE (03-4325/4518; 04-3360); CECEE C. KANE and JOSEPH P. KANE (03-4519; 04-3293/3361) Plaintiffs-Appellants,	)
v.	)
SULZER MEDICA et al., Defendants-Appellees,	)
SULZER SETTLEMENT TRUST, Appellee,	)

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 01-09000- Kathleen McDonald O'Malley, District Judge.

Argued: September 23, 2004

Decided and Filed: February 22, 2005

Before: MARTIN, COLE, and GIBBONS, Circuit Judges.

COUNSEL

ARGUED: Bonnie I. Robin-Vergeer, PUBLIC CITIZEN LITIGATION GROUP, Washington, D.C., for Appellants. Irene C. Keyse-Walker, TUCKER, ELLIS & WEST Cleveland, Ohio, for Appellees. **ON BRIEF**: Bonnie I. Robin-Vergoer, Brian Wolfman, PUBLIC CITIZEN LITIGATION GROUP, Washington, P.C., Thomas J, Brandi, LAW OFFICES OF THOMAS J. BRANDI, San Francisco, California, Kevin P. Mahoney, ROBERTS & MAHONEY, Spokane, Washington, for Appellants. Irene C. Keyse-Walker, TUCKER, ELLIS & WEST Cleveland, Ohio, David W. Brooks, Harvey L. Kaplan, SHOOK, HARDY & BACON, Kansas City, Missouri, Cullen D. Seltzer, BROWN GREER. Richmond, Virginia, for Appellees.

Nos. 03-4325/4518/4519;
04—3293/3360/3361

In re Sulzer Orthopedics and
Knee Prosthesis
Products Liability Litigation

OPINION

BOYCE F. MARTIN, JR., Circuit Judge. Linda Mediate, Cecee Kane, and Joseph P. Kane, plaintiffs in this consolidated appeal, attempted to challenge in the district court findings of the Special Master regarding their entitlement to benefits resulting from the multi-district litigation class action Settlement Agreement. The district court refused jurisdiction over their challenge and we AFFIRM that judgment,

The Settlement Agreement between the parties provides the following: U) a settlement plaintiff may apply for settlement benefits by submitting the required forms to the Claims Administrator; (2) the Claims Administrator will then make a determination regarding the plaintiff's entitlement to benefits; (3) if the plaintiff disagrees with the Claims Administrator's determination, he may file an appeal with the court-appointed Special Master; and (4) [a]ny determination by the special master . . . shall constitute a final and binding determination."

Plaintiffs, Who were duly entitled to benefits under the Settlement Agreement, were disqualified from receiving such benefits because their attorneys failed to file their forms

in a timely manner with the Claims Administrator. Plaintiffs then challenged their disqualification, proceeding through the steps outlined above. The Special Master ultimately denied their challenge, and plaintiffs then sought to appeal that decision to the district court.

The district court properly refused to hear their challenge, explaining that the Settlement Agreement does not provide for an additional appeal of the special master's determination. Plaintiffs' challenge attacks the terms of the Settlement Agreement, and neither this Court nor the district court has authority to entertain such an attack. *See Brown v. County of Genesee*, 872 F.2d 169, 173 (6th Cir. 1989) (internal quotations omitted) ("[A] court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement"). We adopt the reasoning and conclusion of the district court, and AFFIRM its judgment.

Nos, 03-451 9104-3293/3361

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
MAY 07 2005
LEONARD GREEN, Clerk

IN RE: SULZER ORTHOPEDICS AND KNEE PROSTHESIS
PRODUCTS LIABILITY LITIGATION,

CERTIFIED CLASS,
Plaintiffs,

CECEE C. KANE. ET AL.,
Plaintiffs-Appellants,

v. **ORDER**

SULZER MEDICA, ET AL.,
Defendants-Appellees,
)
SULZER SETTLEMENT TRUST,
Appellee.

BEFORE: MARTIN, COLE, and GIBBONS, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/S LEONARD GREEN
Leonard Green, Clerk,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: SULZER HIP	
PROSTHESIS	) Civil Action No.: O1-CV4000
AND KNEE PROSTHESIS	)
PRODUCT	) ALL CASES
LIABILITY LITIGATION	)
	) (MDL No. 1401)
This document relates to:	)
Cecee C. Kane /	) Judge Kathleen M. O'Malley
Claim Number: 537588715	)
Joseph Kane	)
(Claim Number. 533407542	)

NOTICE OF SPECIAL MASTER DETERMINATION

Class Members CeCee C. Kane and her spouse, Joseph Kane, by and through their attorney Kevin P. Mahoney, Esq. of the Law Firm Roberts & Mahoney ("Appellants"), appealed the decision of the Claims Administrator ("Appellee") in rendering Final Determinations dated May 19, 2003 and June 16, 2003 on Appellants' claims for benefits from the Sulzer Settlement Trust.

Appellants appealed the decision of the Appellee, and contend that Appellee erred in his decision to award a net benefit amount of Zero Dollars ($0.00) to Appellants.

The factual findings of this matter are as follows:

1. Appellants submitted an untimely Orange Form seeking APRS benefits, an untimely Red Form seeking Uninsured benefits, and an untimely Yellow Form seeking Derivative Claimant benefits on December 26, 2002.

2. On February 4, 2003 and March 7, 2003 Appellee did issue Preliminary Determinations that Appellants were not eligible for Settlement benefits because their claims had not been submitted before the applicable deadline in accordance with the requirements of the Settlement Agreement.

3. On April 19, 2003 Appellee considered end denied Appellants request for an extension of the APRS filing deadline under the requirements of CAP 29 because Appellants had not presented facts sufficient to warrant an extension of the filing deadline.

4. On May 19, 2003 and June 16, 2003 Appellee issued Final Determinations that Appellants were not eligible for Settlement benefits because they did not file their claims before the deadline.

IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION
Notice of Special Master Determination
CeCee C. Kane / Claim Number: 537588715
Joseph Kane / Claim Number: 533407342

After a thorough review of the appeal submitted by the Appellants and the response submitted by the Appellee, the Special Master finds as follows:

Appellee, Claims Administrator, did not abuse his discretion in denying the APRS and Uninsured APR claims of Appellant Cecee Kane and the Derivative Claimant claim of Joseph Kane, separately filed and consolidated for this opinion.

The eligibility of the Derivative Claimant is dependent on that of the associated APR.

Appellant does not dispute the fact that the claim was 51 days late, but seeks to excuse the late filing on her inability to procure the necessary medical records.

The Settlement Agreement (the "Agreement) anticipated this problem and allows for the timely filing of claim forms and later providing supplemental information to complete the claim.

The Agreement entered into by Class Counsel and approved by the Federal District Court imposes certain duties

on the Appellee. The Claims Administrator is charged with the obligation to apply the plain and unambiguous language of the Agreement uniformly and consistently to all Class Members. Adherence to the filing deadlines is one of those duties. This allows the Appellee the ability to project the number of eligible claims and aids in his determination of benefit amounts to be paid on certain APRS and EIF claims.

While the time restrictions are an integral and necessary part of the Agreement, they are not inflexible.

In addition to allowing for supplemental filings, CAP 29 explains under which circumstances Appellee may grant an extension of time, It also lists specific circumstances the Federal Courts have considered as an insufficient basis for an extension. It prohibits consideration of an otherwise valid claim notwithstanding the error of a Class Member's attorney in making a timely submission because that Class Member was relying on the advice of counsel. Paragraph 7.c of CAP 29 requires Appellee to consider "the reason for the neglect, if any, including whether such neglect was in the reasonable control of the Class Member requesting an extension of time." Appellant retained control over making a timely submission and the request for an extension was properly denied.

By order of the Special Master, Appellee's Final Determination of Zero Dollars ($0.00) is hereby AFFIRMED.

IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION
Notice of Special Master Determination
CeCee C. Kane / Claim Number: 537585715
Joseph Kane I Claim Number: 533407542

Appellants and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a factor principle they believe the Special Master did not consider in rendering a decision. If no response is received by August 26, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

August 11, 2003
Date

/s Leo M. Spellacy
Leo M. Spellacy, Esq,
Special Master

No. 05-678

IN THE SUPREME COURT OF THE UNITED STATES

CECEE C. KANE AND JOSEPH P. KANE,
Petitioners,

v.

SULZER SETTLEMENT TRUST,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI

RESPONDENT SULZER ORTHOPEDICS INC.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Attorneys for Respondent Sulzer Orthopedics Inc.

QUESTION PRESENTED

1. Whether members of the settlement class are required to abide by the terms of the judicially approved Class Action Settlement Agreement that terminates this litigation?

PARTIES TO THE PROCEEDING

Petitioners Kane are Class Members of the certified class in *In re Sulzer Hip Prosthesis and Knee Prosthesis Products Liability Litigation*, MDL No. 1401 (United States District Court, Northern District of Ohio, Eastern Division, Case No. 1:01-CV-9000) whose applications for benefits pursuant to the Settlement Agreement in that class action were deficient and ineligible.

Respondents include Sulzer Orthopedics Inc. and Sulzer AG. Since approval of the Settlement Agreement, Sulzer Orthopedics Inc. was renamed Centerpulse, Inc, which was subsequently purchased by Zimmer Holdings, Inc. For purposes of consistency, Respondent Sulzer is identified, in this brief in opposition, as "Sulzer."

Respondents also include the Claims Administrator, James J. McMonagle, for the Sulzer Settlement Trust, who is required, pursuant to the terms of the Settlement Agreement, to receive, review, and pay to eligible Class Members, benefits from the Sulzer Settlement Trust.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Sulzer Orthopedics Inc. makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? YES

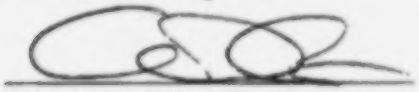
If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

In May 2003, Zimmer Holdings, Inc., which is a publicly-owned company traded on the New York Stock Exchange under the ticker symbol "ZMH," acquired CenterPulse Ltd., whose subsidiaries included CenterPulse Orthopedics Inc., formally known as Sulzer Orthopedics Inc.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? YES

If the answer is YES, list the identity of such corporation and the nature of the financial interest:

Zimmer Holdings, Inc.



(Signature of Counsel)

12/28/05

(Date)

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TO PETITION FOR WRIT OF CERTIORARI

Respondent Sulzer respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari, filed by Petitioners Cecee and Joseph Kane, to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit, filed on February 22, 2005 (App. 1a) and May 7, 2005 (App. 2a).

OPINIONS BELOW

Petitioners Kane have included in their Appendix and Supplemental Appendices the opinions from the District Court (February 6, 2004) and the Circuit Court of Appeals (February 22, 2005), 398 F.3d 782 (6th Cir. 2005).

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Order denying Rehearing En Banc on May 7, 2004 (App. 2a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

SUMMARY OF THE ARGUMENT

Petitioners CeCee and Joseph Kane ("Petitioners") seek to manufacture grounds for certiorari review where none exist. Despite its complex procedural history and class action context, this is essentially a case about the District Court's interpretation and enforcement of the terms of the Class Action Settlement Agreement (CASA) over which it presided and approved as fair, reasonable, and adequate. In a series of three well-reasoned Memoranda and Orders, the United States District Court for the Northern District of Ohio (Judge Kathleen O'Malley) found that the CASA controlling the rights of class members such as Petitioners provided that final decisions on entitlement to class benefits by the Claims Administrator and Special Master were "final and binding." This straightforward determination was based on the plain language of Section 4.6 of the CASA, which provides that final determinations of the Special Master are "final and binding." This determination was based also on the District Court's knowledge that the parties intended "final and binding" to mean "final and binding."

Accordingly, the District Court declined to entertain Petitioners' "appeal" and others like it seeking review of the Special Master's final and binding denials of their untimely benefit claims. On appeal, the United States Sixth Circuit Court of Appeals in a one-page Opinion affirmed the findings of the District Court, adopting the reasoning and conclusion of the District Court that "the Settlement Agreement does not provide for an additional appeal of the special master's determination." *In re: Sulzer Orthopedics and Knee Prods. Liab. Litg.*, 398 F.3d 782 (6th Cir. 2005) ("Opinion") (Petitioners' Appendix at 1a).

The sole issue presented by this Petition is whether the Sixth Circuit erred in affirming the District Court's interpretation and application of the terms of the parties' judicially approved Class Action Settlement Agreement. This is an issue of contractual interpretation, and nothing more. No federal questions are implicated. No due process or constitutional violations are alleged. Nor is there any allegation that the Sixth Circuit has so far departed from the accepted and usual course of judicial

proceedings so as to call for an exercise of this Court' supervisory power.

Petitioners try to make it seem as if the Sixth Circuit's Opinion in this case somehow conflicts with the Eleventh Circuit's opinion in *Turner v. Orr*, 722 F.2d 661 (11th Cir. 1984). It does not. While the Eleventh Circuit concluded that the settlement agreement in that case did allow for District Court review of Special Master determinations, that Court's conclusion was the product of different underlying facts resulting in a different contractual interpretation of a different class action settlement involving different parties in different litigation. There is no conflict when different courts reach different conclusions due to different facts. Indeed, it is difficult to imagine how one court's decision interpreting the terms of one class action settlement agreement could conceivably conflict with the decision of another court interpreting the terms of a different class action settlement. It is the case-specific facts that compel the result, not a different application of legal principles.

COUNTERSTATEMENT OF THE CASE

This Petition represents the last-ditch efforts of untimely claimants seeking additional review to which they are not entitled under the terms of the Class Action Settlement Agreement. Petitioners, unhappy with the decision of the Claims Administrator and the Special Master denying their untimely claims for class benefits, sought further review with the District Court. Discontent with the District Court's refusal to entertain their unauthorized "appeal," Petitioners sought review from the Sixth Circuit. Dissatisfied with the Sixth Circuit's affirmance of the District Court, Petitioners now seek further unwarranted review from this Court through a writ of *certiorari*, despite the lack of any viable issue of federal law or circuit conflict. The extensive procedural history demonstrates why Petitioners can present no cogent grounds for *certiorari* review.

1. The Class Action Settlement and Litigation Background

This Petition arises out of the nationwide Sulzer Class Action Settlement, the background of which is more fully recounted in the District Court's February 6, 2004 Memorandum and Order. Petitioners' Supplemental Appendix at 7-23. Sulzer Orthopedics Inc. ("SOI") designed, manufactured and distributed orthopedic implants for hips, knees, shoulders and elbows. Included in its products were the Inter-Op™ Acetabular Shell, which is a component of a system used for hip replacements, and the Natural Knee® II Tibial Baseplate, which is used in total knee replacements. A manufacturing difficulty led to SOI's voluntary recall in 2000 of 40,000 units of the Inter-Op™ Acetabular Shell. SOI also notified the public that a problem existed with approximately 1,600 Natural Knee® baseplates.

Following the June 19, 2001 Order by the JPML consolidating and transferring all related pending federal litigation to the Northern District of Ohio and assigning oversight of the MDL proceedings to United States District Court Judge Kathleen M. O'Malley, the parties were eventually able to agree to a class settlement. On May 6-7, 2002, the District Court held a final fairness hearing to take additional evidence regarding the "fairness,

reasonableness, and adequacy" of the proposed settlement agreement, as well as the propriety of final class certification and the appropriateness of granting final approval of the settlement agreement.

During this two-day hearing, the Court received testimony from thirteen witnesses - all testifying in support of the proposed settlement. The Court allowed objectors to voice their concerns, but none spoke. Nevertheless, the Court undertook its own questioning of witnesses and pursued the concerns raised by all objectors, including those who had withdrawn their objections prior to the hearing. "[T]he message the Court received, from both represented and unrepresented Class members, was that it would be unjust and unfair if the Court did not approve the proposed Settlement Agreement." Accordingly, the CASA was approved in a June 4, 2002 Judgment Order, reported in *In Re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, 268 F. Supp. 2d 907 (N.D. Ohio 2003), and there were no appeals. SOI and related entities funded the $1.03 billion fund, and at the time of the Sixth Circuit briefing, the Claims Administrator had processed virtually all the 11,000 claim packets received, and had awarded over $700 million to beneficiaries of the settlement trust. Petitioners did not appear at the final fairness hearing, and did not submit any written objections challenging or seeking clarification of any provisions of the CASA.

2. The Parties Define the Rights of Class Members Through the Terms of the Class Action Settlement Agreement

The CASA sets forth in detail the class members' rights and benefit options.[1] The CASA requires that claim forms be submitted in order to request benefits. *See* CASA at Article 4. The CASA also sets forth the timeliness requirements for filing claim forms. Individuals seeking benefits from the Affected Product Revision Surgery Fund were required to submit an Orange Form for payment benefits within 180 days after approval of the Class Settlement, and 180 days after the applicable surgery. Thus,

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[1] A copy of the CASA is available at http://www.sulzerimplantsettlement.com/.